

**.IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:
PCS & BUILD LLC

Debtor(s)

Case Number: 24-11126
Chapter 7 Proceedings

Judge: Suzana Krstevski Koch

**TRUSTEE’S EMERGENCY MOTION
FOR AUTHORIZATION TO RENEW
THE DEBTOR’S SOFTWARE
LICENSE AND PAY RELATED
EXPENSES AND REQUEST FOR
EXPEDITED HEARING**

Virgil E. Brown, the chapter 7 trustee (“Trustee”) of the bankruptcy estate (“Estate”) of the above-caption debtor (“Debtor”), by and through the undersigned counsel, hereby files this *Emergency Motion for Entry of an Order Authorizing the Chapter 7 Trustee to Renew the Debtor’s Software License and Pay Related Expenses And Request for Expedited Hearing* (“Emergency Motion) and requests emergency relief no later than **June 25, 2024 at 12:00 PM (EST)**. In support thereof, the Trustee respectfully states as follows:

EMERGENCY RELIEF

1. Emergency relief is sought on or before June 25, 2024 at 12:00 PM (EST) prior to the expiration of and concurrent deadline to extend the Debtor’s license to utilize Acumatica accounting software (“Software”) prior to the June 26, 2024 expiration of the Debtor’s current Software license.

2. The Trustee seeks entry of an order substantially in the form of the proposed order filed herewith and attached as Exhibit A authorizing the Trustee’s renewal of the Software license and the Trustee’s payment of the Software renewal fee (“Renewal Fee”) out of the Estate’s

assets. The Trustee also requests an expedited hearing on this Emergency Motion and entry of an order granting such expedited hearing substantially in the form of the proposed order filed herewith and attached as Exhibit B. .

3. Should this Court determine that a hearing is necessary and set a hearing date, the Trustee shall file a Notice of Emergency Motion and Expedited Hearing stating the scheduled hearing date substantially in the form of the proposed form of notice attached hereto as Exhibit C.

4. The bases for the relief requested herein are sections 105(a) and 704 of title 11 of the United States Code (“Bankruptcy Code”).

ARGUMENT

5. Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure establish a procedure by which a chapter 7 trustee may request court authority to pay expenses of the bankruptcy estate out of estate assets. While other federal bankruptcy courts have promulgated local rules establishing such procedures, the Trustee and the Trustee’s undersigned counsel were unable to identify any such local rule applicable in this Court. Thus, in an abundance of caution, the Trustee requests this Court’s authorization to make certain payments from the Estate’s assets to ensure the Trustee’s continued access to the Debtor’s financial data history.

6. In the course of the Debtor’s business, the Debtor maintained a software license to utilize the Software for its bookkeeping and accounting needs. As stated above, the Debtor’s current Software license expires on June 26, 2024 (“Expiration Date”), after which date the Debtor (and the Trustee) may lose complete access to the Debtor’s accounting data and financial history.

7. The Debtor's Software account contains records and information integral to the discovery process and continued prosecution and defense of claims in the Spooky Nook Litigation, as that term is defined in the *Trustee's Application to Employ Frantz Ward LLP as Special Litigation Counsel* (ECF #74).

8. Further, the Trustee must be permitted to maintain access to the Debtor's financial records and accounting data in order to effectively carry out his duties pursuant to Bankruptcy Code section 704.

9. To ensure continued access to the data and records contained in the Debtor's Software account, the Trustee intends to pay the following Renewal Fee associated with extending the Debtor's Software license, or such lesser amount as the Trustee may negotiate with the Software vendor, subject to this Court's approval to pay such Renewal Fee out of the assets of the Estate:

Contract ID	Begin Date	End Date	Currency	Bill Frequency	Account ID	Customer		
1002673	6/27/2024	6/26/2025	USD(\$)	Annually	0000015465	PCS Companies		
SKU Name					Qty	List Price	Cust Disc Pct	Customer Price
CAE-SAAS-CAE-RW	Acumatica Advanced Construction Edition, SaaS License				1.00	\$15,532.02	0.00 %	\$15,532.02
CAE-SAAS-FIN-RW	Financials				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-DOM-RW	Order Management				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-INT-RW	Intercompany Accounting				1.00	\$3,511.59	0.00 %	\$3,511.59
CAE-SAAS-CRM-RW	CRM				1.00	\$3,160.43	0.00 %	\$3,160.43
CAE-SAAS-MA-RW	Monitoring and Automation				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-RS1	S1 - Up to 1000 Monthly Commercial Transactions				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-PRJ-RW	Project Accounting				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-OUTI-RW	Outlook and Gmail Plugins				1.00	\$2,323.05	0.00 %	\$2,323.05
CAE-SAAS-TNI-RW	Included Tenants				5.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-DBI-RW	Included Storage, GB				100.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-RETA-RW	Retainage				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-COSC-RW	Cost Codes				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-CMPL-RW	Construction Features				1.00	\$0.00	0.00 %	\$0.00
CAE-SAAS-PRL1-RW	Acumatica US Payroll, Includes 10 Employees				1.00	\$844.14	0.00 %	\$844.14
CAE-SAAS-PRL3-RW	Acumatica US Payroll Expansion, Additional 50 Employees				1.00	\$2,532.40	0.00 %	\$2,532.40
CAE-SAAS-BSPS	Basic Support (S Level)				1.00	\$2,546.16	0.00 %	\$2,546.16
PCS Companies					Totals:	\$30,449.79		\$30,449.79

10. The Trustee states that there are approximately \$83,000 dollars in the Estate and at least two creditors that have filed UCC financing statements that may claim an interest in the cash held by the Trustee, namely Farmers National Bank of Canfield and Nationwide Mutual Insurance Company. The Trustee has not had a full opportunity to determine the extent, validity or priority of the liens of these two creditors.

11. Over the last three days, the Trustee has attempted to negotiate a much lower payment than the approximately \$30,489.79 Renewal Fee set forth above in paragraph 9. The Trustee will continue his efforts to negotiate in order to maximize the funds of the Estate. However, in an abundance of caution, and understanding the Court's schedule, the Trustee seeks authorization to pay up to the full amount of the Renewal Fee in order to ensure the continuation of the license.

PRAYER

WHEREFORE, the Trustee respectfully requests that this Court enter an order substantially in the form of the proposed order filed herewith and grant any such other and further relief as may be just and proper.

Respectfully,

/s/ John F. Kostelnik

John F. Kostelnik (0014919)

Naomi G. Tellez (0102477)

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Special Litigation Counsel for the Chapter 7 Trustee

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:
PCS & BUILD LLC

Debtor(s)

Case Number: 24-11126
Chapter 7 Proceedings

Judge: Suzana Krstevski Koch

**ORDER AUTHORIZING THE
TRUSTEE TO RENEW THE
DEBTOR'S SOFTWARE LICENSE
AND PAY RELATED EXPENSES**

Upon the Emergency Motion¹ of Virgil E. Brown, the chapter 7 trustee ("Trustee") of the bankruptcy estate of the above-captioned debtor ("Debtor"), for the entry of an order pursuant to 11 U.S.C. §§ 105(a) and 704 authorizing the Trustee to renew the Debtor's Acumatica software ("Software") license and pay related expenses, and good and sufficient cause appearing therefor, the Court FINDS AND DETERMINES THAT:

1. The Court has jurisdiction over the Debtor'(s) case and the Emergency Motion pursuant to 28 U.S.C. § 1334, venue is proper in the Court pursuant 28 U.S.C. §§ 1408 and 1409, and this is a core proceeding pursuant to 28 U.S.C. § 157.

2. Due and sufficient notice of the Emergency Motion has been given under the particular circumstances and no other or further notice need be given. Any objections to the relief requested in the Emergency Motion not otherwise withdrawn, waived, or settled are hereby overruled.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Emergency Motion.

WHEREFORE, it is hereby ORDERED:

3. The Emergency Motion is GRANTED as set forth herein.

4. The Trustee is authorized to renew the Debtor's Software license and pay the Renewal Fee set forth in the Emergency Motion, or such lesser amount as the Trustee may negotiate with the Software vendor.

5. The stay imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived; this Order shall be immediately effective and enforceable upon entry.

PREPARED BY:

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Special Litigation Counsel for the Chapter 7 Trustee

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via the Court's ECF System on this the ____ day of June, 2024, to the following:

Michael Frantz Jr., John Kostelnik, and Naomi Tellez on behalf of Debtor PCS & Build LLC
mjfrantzjr@frantzward.com, jkostelnik@frantzward.com, ntellez@frantzward.com

Amy E Bentz on behalf of Creditor Atlantic Specialty Insurance Company
aebentz@bentzlaw.com

Anthony J. DeGirolamo on behalf of Debtor PCS & Build LLC
tony@ajdlaw7-11.com, amber@ajdlaw7-11.com; G23630@notify.cincompass.com

Barry F. Fagel on behalf of Creditor OK Interiors Inc.

jtoon@lindhorstlaw.com

Daniel A. DeMarco, Royce R. Remington, Esq., and Jeffrey A. Brauer, Esq. on behalf of Creditors and Parties of Interest Champion Mill Land, LLC, Historic Mill Land 2, LLC
dademarco@hahnlaw.com, cmbeitel@hahnlaw.com, rrr@hahnlaw.com, jabrauer@hahnlaw.com

Dov Y. Frankel and Timothy Miller on behalf of Creditor Atkins & Stang Inc.
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Edward J. Boll, III on behalf of Creditor Miter Masonry Contractors, Inc.
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Edwin H. Breyfogle, Laura L. Mills and Pierce Walker on behalf of Creditors Hourglass Holdings, LLC, Jennifer Coon, and Steven C. Coon
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Gerald E. Lofstead, III and W. Eric Gadd on behalf of Creditor City of Moundsville
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Jeremy M. Campana and John B. Kopf on behalf of Creditor Bronco Excavating, Inc. and Russell Brands, LLC

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Philomena S. Ashdown on behalf of Creditor Feldkamp Enterprises, Inc.
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Robert D. Barr on behalf of Interested Party Pietro J Perticarini, Jr.
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Jarrold Stone, Melissa J. Lee, and Taylor S. Ward on behalf of Nationwide Mutual Insurance Company
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Richard K. Stovall on behalf of PCS & Estimate, LLC
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Nathanial Sinn on behalf of Solon Community Living, Inc.
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EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:
PCS & BUILD LLC

Debtor(s)

Case Number: 24-11126
Chapter 7 Proceedings

Judge: Suzana Krstevski Koch

**ORDER GRANTING TRUSTEE'S
REQUEST FOR EXPEDITED
HEARING ON EMERGENCY
MOTION FOR AUTHORIZATION TO
RENEW THE DEBTOR'S
SOFTWARE LICENSE AND PAY
RELATED EXPENSES**

Upon the Chapter 7 Trustee's Emergency Motion (the "Motion") for entry of an order (the "Order") approving expedited consideration of the *Emergency Motion for Entry of an Order Authorizing the Chapter 7 Trustee to Renew the Debtor's Software License and Pay Related Expenses And Request for Expedited Hearing*; and the Court having reviewed the Motion; and the Court finding that (1) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (iii) notice of the

Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. An expedited hearing on the Scheduling Motion will be held on June 20, 2024 at 10:30 a.m., United States Bankruptcy Court, Courtroom 2A, 201 Superior Avenue, Cleveland, Ohio 44114. Parties wishing to have their views heard on the Scheduling Motion must attend the expedited hearing.
3. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of the Order.

PREPARED BY:

/s/ John F. Kostelnik
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Special Litigation Counsel for the Chapter 7 Trustee

EXHIBIT C

NOTICE OF EMERGENCY MOTION AND HEARING

The Trustee has filed papers with the Court to obtain the Court's authorization on an emergency basis to pay certain expenses of the Estate.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the Emergency Motion, or if you want the Court to consider your views on the Emergency Motion, then before **June 20, 2024**, you or your attorney must:

File with the Court a written response using the Court's ECF System or at:

United States Bankruptcy Court
Howard M. Metzenbaum U.S. Courthouse
201 Superior Avenue
Cleveland, Ohio 44114

OR, you or your attorney must appear at the hearing on the Emergency Motion scheduled for **June 20, 2024** at 10:30 a.m..

If you mail your request or response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

You must also mail a copy to:

John F. Kostelnik
Frantz Ward LLP
200 Public Square, Suite 3000
Cleveland, Ohio 44114

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Emergency Motion and may enter an order granting that relief without a hearing.

Date: June 18, 2024

Signature: /s/ John F. Kostelnik

Name: John F. Kostelnik, Esq.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via the Court's ECF System on this the 18th day of June, 2024, to the following:

Amy E Bentz on behalf of Creditor Atlantic Specialty Insurance Company
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Anthony J. DeGirolamo on behalf of Debtor PCS & Build LLC
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Barry F. Fagel on behalf of Creditor OK Interiors Inc.

jtoon@lindhorstlaw.com

Daniel A. DeMarco, Royce R. Remington, Esq., and Jeffrey A. Brauer, Esq. on behalf of Creditors and Parties of Interest Champion Mill Land, LLC, Historic Mill Land 2, LLC
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lkaras@mmflaw.com, pwalker@mmflaw.com

Gerald E. Lofstead, III and W. Eric Gadd on behalf of Creditor City of Moundsville
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Jeremy M. Campana and John B. Kopf on behalf of Creditor Bronco Excavating, Inc. and Russell Brands, LLC

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